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No. 94-1518

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

DOCTOR'S ASSOCIATES, INC.
and NICK LOMBARDI,

Petitioners,

v.

PAUL CASAROTTO and PAMELA CASAROTTO,

Respondents.

On Petition for a Writ of Certiorari to
the Supreme Court of Montana

BRIEF FOR THE INTERNATIONAL FRANCHISE ASSOCIATION, AS AMICUS CURIAE SUPPORTING PETITIONERS

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BRIEF FOR THE INTERNATIONAL FRANCHISE ASSOCIATION, AS AMICUS CURIAE SUPPORTING PETITIONERS

INTEREST OF THE AMICUS CURIAE

The International Franchise Association ("IFA"), founded in 1960, is the oldest and largest trade association in the world representing the interests of franchising. IFA has more than 750 franchisor members and, since first inviting franchisees to join in 1993, has already attracted more than 27,000 franchisee members. IFA serves as a resource center for current and prospective franchisors and franchisees, state and federal government agencies, and the

public. IFA also represents the interests of franchising before legislatures, the courts, and the public. The Association has been instrumental in promoting balanced legislation to regulate franchising practices in the United States.

A franchise is a contractual relationship in which the franchisor, the owner of a business concept and associated trademarks or service marks, authorizes a franchisee to conduct a business that is identified by the franchisor's marks and uses the franchisor's format and operating system. The contractual relationship is defined by a franchise or license agreement, which sets forth the respective obligations of the franchisor and franchisee. To promote uniformity in their franchise networks, franchisors utilize standardized agreements. However, such "form" agreements are frequently subject to negotiation. An increasing number of franchising companies, in an effort to resolve disputes with their franchisees in the least costly, least disruptive and most expeditious manner possible, include in their franchise agreements an undertaking to resolve disputes by arbitration, binding on both the franchisor and the franchisee. Such agreements obligate the parties to arbitrate disputes, usually under the auspices of the American Arbitration Association or similar organization, and often in the home state of the franchisor. In the past year alone, almost 400 arbitrations involving franchise relationships were initiated with the American Arbitration Association.

Historically, many state courts and state legislatures have looked dimly on arbitration, especially when it occurred as the result of a pre-dispute agreement to arbitrate. Whether this reluctance to honor agreements to arbitrate stemmed from the belief that arbitration did not afford the same procedural or substantive safeguards as litigation, or whether it grew out of the states' effort to preserve in-state forums for their citizens, the end result

was that arbitration agreements were routinely disregarded. With the passage of the Federal Arbitration Act ("FAA") and rigorous enforcement of arbitration agreements under the FAA, especially by federal courts, most state courts and legislatures grudgingly accepted arbitration as a legitimate means of resolving disputes. In the past several years, however, a backlash has occurred. A number of states, including Montana, have enacted statutes, purportedly under the guise of ensuring that arbitration agreements are freely entered into, that seriously undermine the enforceability of agreements to arbitrate. One of the most prevalent examples of such legislation is the Montana statute that is the subject of the Montana Supreme Court's decision below,[1] which requires that notice of the existence of an agreement to resolve disputes by arbitration be displayed on the first page of the contract in underlined, capital letters, a requirement that is applicable only to arbitration agreements, not to contracts generally. While federal courts have consistently struck down anti-arbitration statutes of this type on preemption grounds, a growing number of state courts, of which the Montana Supreme Court is but the latest example, have held otherwise, permitting states to single out arbitration agreements for unfavorable treatment.

IFA is vitally concerned about this case because permitting the decision of the Montana Supreme Court to stand will encourage other state courts and legislatures to undertake similar steps to undercut the enforceability

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[1] The Montana Supreme Court's opinion in this case, together with the special concurrence and dissents, is printed as Appendix A to the Petition for a Writ of Certiorari filed with the Court in this case. References to the lower court's opinion are designated "App. A" followed by a page reference.

of agreements to arbitrate and further thwart the strong federal policy favoring arbitration. As a result, franchisors and other businesses that include arbitration provisions in their form agreements will either be forced to tailor their agreements to the laws of 50 different states or forgo the many advantages inherent in the arbitration process. Even now, the inconsistent treatment of arbitration notice provisions by federal and state courts introduces great uncertainty into the franchise relationship and spawns satellite litigation over the enforceability of those provisions that threatens to overwhelm the benefits of economy and efficiency that arbitration was originally intended to produce.

Pursuant to Rule 37.2 of the Rules of this Court, IFA respectively submits this brief as *amicus curiae* in support of petitioners. Because many IFA members, both franchisors and franchisees, utilize arbitration as a means of resolving disputes, IFA has a substantial interest in the outcome of this case and is able to provide an additional and broader prospective on the issues presented. IFA believes this brief will assist the Court in analyzing and resolving these issues. The parties have consented to the filing of this brief, and their written consents have been filed with the Clerk of Court.

SUMMARY OF ARGUMENT

In the decision below, the Montana Supreme Court unduly restricted the preemptive reach of Section 2 of the FAA by holding that Montana's notice requirement for arbitration agreements does not violate the Supremacy Clause. In doing so, the Montana Supreme Court disregarded two controlling decisions of this court, *Southland Corp. v. Keating*, 465 U.S. 1 (1984), and *Perry v. Thomas*, 482 U.S.

483 (1987), which held that states may not restrict the enforceability of agreements to arbitrate except on "grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. Since Montana's notice requirement is directed exclusively at arbitration provisions and not at any other contractual terms, it is preempted by the FAA. In addition to conflicting with *Southland* and *Perry*, the Montana Supreme Court's decision also runs directly contrary to the decisions of the three federal courts of appeals that have addressed the issue, all of which held that state arbitration notice requirements are preempted by the FAA. Instead of following these decisions, the court below relied on two intermediate state courts in Indiana and Texas that upheld similar notice provisions. Review of the decision below is necessary to signal to state courts and legislatures that, for purposes of preemption under the FAA, burdening the enforceability of arbitration agreements with a notice provision is no different than declaring those agreements unenforceable *per se*.

In determining that Montana's notice provision did not undermine the goals and policies of the FAA, the Montana Supreme Court also distorted this Court's holding in *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468 (1989). The decision in *Volt* was premised on the notion that the primary purpose of the FAA is to enforce privately negotiated agreements to arbitrate, even where those agreements allow for arbitration to be stayed pending the resolution of related litigation. Because the parties here chose the AAA's Commercial Arbitration Rules and Connecticut law, not Montana law, to govern their arbitration agreement, *Volt* requires that their choice be upheld and not, as the Montana Supreme Court reasoned, that another state's law be substituted that would invalidate the parties' agreement to arbitrate. In addition, although in *Volt*

this Court observed that the FAA does not entirely preempt state arbitration laws, in particular state laws governing the procedures under which arbitration is conducted, the Montana Supreme Court perverted this holding into a license to enforce a state arbitration law that went to the very substance of the right to arbitrate, prohibiting arbitration from occurring altogether. The Montana Supreme Court's conclusion that the FAA mandates the enforcement only of those arbitration agreements that are entered into "knowingly," which Montana's notice provision is purportedly designed to promote, flies in the face of the FAA's insistence on rigorous enforcement of arbitration agreements. Because of the apparent solicitude for arbitration of the majority of the Montana Supreme Court, when in fact its decision and the statute it enforced are based on hostility to arbitration agreements, it is crucial that this Court grant review of the decision below to discourage similar attempts by state courts and legislatures to undermine the FAA on the pretext of furthering its goals and policies.

The Montana Supreme Court's decision is also premised on judicial and legislative hostility to arbitration, which has long been discredited by this Court in view of the many advantages that arbitration affords over traditional litigation, including speed, economy, adjudicative expertise and the capacity to preserve long-term relationships once the dispute is resolved. To enforce statutes like Montana's either would deprive the parties to a franchise relationship of these advantages altogether, or would seriously impede the use of arbitration in the franchise relationship by burdening franchisors with tailoring their contract documents to meet the requirements of 50 different states relative to the enforceability of arbitration provisions. Moreover, the Montana Supreme Court's reasoning is based

on unsupported and unfounded assumptions regarding the negotiability of arbitration agreements and the role of forum-selection clauses in those agreements.

The decision below introduces rationales that substantially curtail the enforceability of agreements to arbitrate and raise issues of great importance under the FAA and the Supremacy Clause. These issues have enormous significance for a large and growing segment of American business. These are compelling reasons for this Court's review.

ARGUMENT

I.

THIS COURT SHOULD DECIDE WHETHER A STATE STATUTORY NOTICE PROVISION FOR ARBITRATION IS PREEMPTED BY THE FEDERAL ARBITRATION ACT

In holding that the FAA does not preempt Montana's statute requiring that a contract containing an arbitration agreement include a conspicuous notice to that effect on the face of the contract, the Montana Supreme Court disregarded two of this Court's controlling precedents and a substantial number of lower federal court decisions that flatly refute the Montana Supreme Court's holding. In so doing, the Montana Supreme Court has severely restricted the preemptive reach of the FAA. Moreover, the Montana Supreme Court reached its decision by seriously distorting this Court's holding in *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468 (1989), to the point of emasculating the enforceability of agreements to arbitrate under the FAA.

A. The Montana Supreme Court's Decision Disregards Prior Decisions Of This Court And Other Lower Federal Courts

The Montana Supreme Court held that the Montana notice provision is not preempted by Section 2 of the FAA because the notice requirement does not "undermine the goals and policies of the FAA." App. A at 16a. In so holding, however, the Montana Supreme Court disregarded this Court's controlling decisions in *Southland Corp. v. Keating*, 465 U.S. 1 (1984), and *Perry v. Thomas*, 482 U.S. 483 (1987). In holding that a provision of the California Franchise Investment Law requiring judicial consideration of claims brought under the statute was preempted by the FAA, this Court in *Southland* declared that the *only* permissible limitation under state law on the enforceability of agreements to arbitrate (other than the "involving commerce" requirement) was whether those agreements were revocable upon " 'grounds as exist at law or in equity for the revocation of any contract.' " 465 U.S. at 11 (quoting 9 U.S.C. § 2). Likewise, in *Perry*, this Court struck down a provision of the California Labor Code, which precluded arbitration of wage collection claims, on the ground that the California law did not "[arise] to govern issues concerning the validity, revocability, and enforceability of contracts generally," but rather "[took] its meaning precisely from the fact that a contract to arbitrate is at issue." 482 U.S. at 492 n. 9.

The Montana statute at issue here is preempted by the FAA because it clearly "takes its meaning precisely from the fact that a contract to arbitrate is at issue." Montana does not require that any other contractual provision be flagged with a conspicuous notice provision on the first page of the contract. Arbitration agreements alone are burdened with this requirement in Montana—burdened,

in that the absence of such a notice renders the agreement to arbitrate unenforceable. Under this Court's decisions in *Southland* and *Perry*, therefore, the Montana statute is preempted by the FAA.

Indeed, in a recent pronouncement on the FAA, this Court reaffirmed that, under its holdings in *Southland* and *Perry*, the FAA preempts state laws that seek to invalidate arbitration agreements. *See Allied-Bruce Terminix Companies, Inc. v. Dobson*, 115 S. Ct. 834 (1995); *accord Mastrobuono v. Shearson Lehman Hutton, Inc.*, 115 S. Ct. 1212, 1215-16 (1995). In *Terminix*, this Court decisively rejected a request to overrule *Southland* and permit state courts to apply their own anti-arbitration laws regardless of whether interstate commerce was involved, holding that *Southland* was well-established law and that, consequently, Alabama could not apply its statute barring pre-dispute arbitration agreements to invalidate an arbitration provision. *Terminix*, 115 S. Ct. at 838-39 After observing that the "basic purpose of the Federal Arbitration Act is to overcome courts' refusal to enforce agreements to arbitrate" and to place those agreements " 'upon the same footing as other contracts,' " *id.* at 838 (quoting *Volt*, 489 U.S. at 474), Justice Breyer, writing for this Court, concluded that while "States may regulate contracts, including arbitration clauses, under general contract law principles and they may invalidate an arbitration clause 'upon such grounds as exist at law or in equity for the revocation of *any* contract'[,] . . . [w]hat States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause," *Terminix*, 115 S. Ct. at 843 (quoting 9 U.S.C. § 2) (emphasis in original). Montana has done in the statute at issue here precisely what this Court and numerous other federal and state courts over the past

decade have held that it cannot do: It has decided that contracts are fair enough to enforce all their basic terms, even absent a special notice designed to bring the existence of those terms to the parties' attention, but that arbitration agreements are not fair enough to enforce without such a notice.

The Montana Supreme Court's holding also disregards the contrary decisions from the three federal courts of appeals that have addressed the issue, all of which have invalidated arbitration notice provisions similar to the Montana statute. *See, e.g., David L. Threlkeld & Co., Inc. v. Metallgesellschaft, Ltd. (London)*, 923 F.2d 245, 249-50 (2d Cir.), *cert. dismissed*, 501 U.S. 1267 (1991) (invalidating a Vermont statute that required agreements to arbitrate to be "prominently displayed" in contracts and signed by the parties); *Securities Indus. Ass'n v. Connolly*, 883 F.2d 1114, 1120 (1st Cir. 1989), *cert. denied*, 495 U.S. 956 (1990) (invalidating a state regulation requiring full written disclosure of "the legal effect of the pre-dispute arbitration contract or clause"); *Webb v. R. Rowland & Co.*, 800 F.2d 803, 806-07 (8th Cir. 1986) (invalidating a requirement that contracts highlight the existence of arbitration clauses in 10-point capital letters); *Collins Radio Co. v. Ex-Cell-O Corp.*, 467 F.2d 995, 997-99 (8th Cir. 1972) (invalidating a requirement that arbitration agreements bear an attorney's acknowledgement that all parties have been advised of the agreement's effects). Instead, the Montana Supreme Court has joined a growing number of state courts that have reinvigorated the former hostility to arbitration by concluding that arbitration notice provisions do not run afoul of the FAA. *See, e.g., American Physicians Service Group, Inc. v. Port Lavaca Clinic Assoc.*, 843 S.W.2d 675, 678 (Tex. Ct. App. 1992) (en banc), *writ of error denied* (Tex. Apr. 21, 1993); *Albright v. Edward D. Jones & Co.*,

571 N.E.2d 1329, 1332-33 (Ind. Ct. App. 1991), *cert. denied*, 113 S. Ct. 61 (1992). In addition, a number of states have similar laws that single out arbitration agreements for unfavorable treatment by regulating the placement and acknowledgment of arbitration agreements in certain types of contracts. Courts in those states could well be encouraged by the Montana Supreme Court's decision below to uphold similar anti-arbitration statutes against preemption attacks.[2] Thus, there is a compelling need for this Court to review—and reverse—the decision of the Montana Supreme Court in order to signal to state courts and legislatures that, for purposes of preemption under the FAA, statutory notice provisions for arbitration are no less hostile to arbitration than were the statutes at issue in *Southland* and *Perry*.

B. The Montana Supreme Court's Decision Distorts This Court's Reasoning In *Volt*

In sustaining the Montana statute against a preemption attack, the Montana Supreme Court also seriously distorted this Court's reasoning in *Volt* in several respects. First, the decision below completely disregards the parties' arbitration agreement. As this Court observed in *Volt*, the primary purpose of the FAA is to enforce "privately negotiated arbitration agreements," and parties to an arbitration agreement should be "at liberty to choose the terms under which they will arbitrate." 489 U.S. at 472. Here, the parties chose the AAA's Commercial Arbitration Rules and Connecticut law, not Montana law, to govern their arbitration agreement. Since neither

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[2] *See* Petition for a Writ of Certiorari, at 21 nn. 20 & 21 (citing statutes).

Connecticut law nor the AAA's rules nor the FAA conditions the enforceability of an agreement to arbitrate on the existence of a notice provision, *Volt* cannot support the result reached by the Montana Supreme Court. On the contrary, the very notion of enforcing a notice provision *not* chosen by the parties to invalidate an arbitration provision *chosen* by the parties is completely antithetical to the teaching of *Volt* and strikes at the heart of the FAA's purpose—to ensure that private agreements to arbitrate are rigorously enforced according to their terms.

Second, the Montana Supreme Court's unduly narrow interpretation of the scope of federal preemption of state arbitration laws is impossible to square with *Volt*. Purportedly relying on *Volt*, the Montana Supreme Court declared that Montana's notice requirement does not "undermine the goals and policies of the FAA," because Congress never intended to preempt the entire field of arbitration and because the FAA does not require parties to arbitrate when they have not agreed to do so. App. A at 16a. However, this Court's statement in *Volt* that the FAA does not entirely preempt state arbitration law was made in reference to a California *procedural* statute that merely had the effect of delaying an arbitration until after litigation of related claims had occurred—and under circumstances where the parties had chosen that law to govern their arbitration. Thus, the California law affected only the timing of arbitration, and did not purport to prohibit arbitration altogether. Here, however, the Montana Supreme Court has interpreted *Volt* to permit a state to ban arbitration in its entirety, notwithstanding the existence of an arbitration agreement enforceable under the laws of the parties' own choosing. Nor does the justification offered by the Montana Supreme Court for its holding—that the FAA mandates the enforcement only of those

arbitration agreements that are "knowingly" entered into—survive scrutiny. Since the "knowing" requirement applies only to arbitration agreements and not to contracts generally in Montana, it is preempted under *Southland* and *Perry*. Behind Montana's preoccupation with ensuring that arbitration agreements are "knowingly" entered into lies considerable legislative and judicial hostility toward arbitration. Because of this apparent solicitude for arbitration of the majority of the Montana Supreme Court, when its decision and the statute it enforced are, in fact, based on hostility to arbitration agreements, and in order to forestall similar attempts by state courts or legislatures to use this Court's reasoning in *Volt* to turn the FAA on its head, it is critical that this Court grant review of that decision.

II.

THE MONTANA SUPREME COURT'S DECISION REPRESENTS UNSOUND PUBLIC POLICY

Arbitration notice provisions like Montana's not only run afoul of the Supremacy Clause and Section 2 of the FAA, but also represent unsound public policy based on a discredited judicial and legislative hostility to arbitration. Opponents of arbitration have long maintained that arbitration represents an inferior, and inadequate, form of justice compared with traditional litigation because, they say, it deprives parties of, among other things, substantive rights under state statutory and common law, the right to a jury trial, wide-ranging discovery procedures, a broad right of appeal, competent adjudicators and, in many cases, an in-state forum. Detractors of arbitration also attack the consensual nature of pre-dispute arbitration agreements, pointing out that those agreements are often contained in non-negotiated form contracts between parties of unequal bargaining power. These anti-arbitration sentiments, barely

concealed in the majority opinion of the Montana Supreme Court, come to the surface in the special concurring opinion of Justice Trieweiler. App. A at 18a-22a. This Court, however, has repeatedly dismissed those objections as unfounded[3] and, in doing so, has acknowledged the many benefits of arbitration, including speed, *see, e.g., Terminix*, 115 S. Ct. at 843; economy, *see, e.g., id.*; informality and adaptability of procedures; *see, e.g., Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 633 (1985); availability of expert adjudicators, *see, e.g., Mitsubishi*, 473 U.S. at 633; and ability to preserve the disputants' relationship, *see Terminix*, 115 S. Ct. at 843. Moreover, as this Court has observed, arbitration offers advantages to large and small businesses as well as to individuals, notwithstanding that it is often invoked under a form contract between parties having unequal bargaining power. *See Terminix*, 115 S. Ct. at 843; *Gilmer v. Interstate/Johnson Lane Corp.*, 111 S. Ct. 1647, 1655 (1991).

Permitting the decision below, with its inherent bias against arbitration, to stand will encourage other state courts and legislatures to likewise impair the enforceability of arbitration agreements, with serious repercussions for franchising and other business relationships that utilize

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[3] The various objections to arbitration which this Court has dismissed include: 1) its inability to further important social policies, *see Gilmer v. Interstate/Johnson Lane Corp.*, 111 S. Ct. 1647, 1653 (1991); 2) inherent bias of arbitrators, *see id.* at 1654; *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 634 (1985); 3) lack of discovery procedures, *see Gilmer*, 111 S. Ct. at 1654-55; 4) lack of meaningful judicial review, *see Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 232 (1987); incompetence of arbitrators, *see McMahon*, 482 U.S. at 232; 6) limitations on substantive rights or relief, *see Gilmer*, 111 S. Ct. at 1655; and 7) that it is the product of unequal bargaining power, *Gilmer*, 111 S. Ct. at 1655.

arbitration to resolve disputes. Arbitration enjoys widespread use in the franchise community, in large part because it offers many advantages to franchisors and franchisees over traditional litigation. It is typically much less expensive than litigation because of the absence of, or limitations on, pleading requirements, motion practice, discovery and pretrial procedures. Since many disputes between franchisors and franchisees, such as claims for nonpayment of royalty fees, involve relatively small amounts of money, arbitration enables the parties to resolve these disputes economically without having to spend the entire value of the claim pursuing a remedy. Moreover, the great majority of franchisors are relatively small companies and, like many franchisees, cannot afford the high cost associated with pursuing or defending claims in a judicial forum.

The elimination or reduction in scope of motion practice, discovery and pretrial procedures in arbitration also makes it generally much quicker than litigation. The relative speed with which arbitrations proceed from the initial filing of the arbitration demand to the issuance of an award and, if necessary, confirmation of the award by a court, not only will in most cases cost the parties less in attorneys' fees but also will enable them to resume their relationship more quickly without the continuing disruptive influence of a pending lawsuit. Similarly, the informality and often less adversarial nature of arbitration enhance the prospect that the franchisor and franchisee will be able to honor their respective obligations while the arbitration is pending, put aside their differences once the arbitration has concluded and keep the franchise relationship intact. Franchise relationships are unique in today's business world because they typically run for a period of ten to twenty years. Since disputes are bound to arise in a relationship of that length, arbitration offers

a method for resolving those disputes while preserving the long-term nature of the relationship. Moreover, because arbitration is more flexible with regard to scheduling times and places of hearings, it tends to be less disruptive of the day-to-day operations of franchisors and franchisees alike, an important consideration in light of the fact that many franchisors and franchisees are small businesses with limited personnel. Finally, arbitration also offers the parties to a franchise relationship the option of having an individual experienced in franchising adjudicate their dispute. Because franchising is a unique form of business organization and is subject to a wide array of registration, disclosure and relationship laws, franchise expertise is often a sought-after qualification of arbitrators chosen to decide franchise disputes. To ensure that the many advantages of arbitration remain available to them, national franchisors should not be compelled to tailor their contract documents to meet the requirements of 50 different states.

Furthermore, there is nothing inherent in the arbitration process itself that favors franchisors over franchisees. Contrary to the anti-arbitration sentiments expressed in the special concurring opinion of Justice Trieweiler, franchisees are often sophisticated, multi-unit operators who, on their own behalf or through counsel, negotiate the terms of their franchise agreements, including whether and under what circumstances arbitration of disputes will occur. Although arbitration agreements often provide for arbitration in the franchisor's home state, there are sound business reasons for a franchisor to consolidate disputes with its franchisees in a forum where it can resolve them as cost-effectively as possible. It is certainly no more burdensome for an individual franchisee to arbitrate in the franchisor's home state than it is for a national franchisor to arbitrate against multiple franchisees in their

respective home states. Indeed, in light of this Court's decision in *Carnival Cruise Lines, Inc. v. Shute*, 111 S. Ct. 1522 (1991), upholding the enforceability of a non-negotiated choice-of-forum clause printed on the reverse side of a cruise line passenger ticket, there is no serious argument that forum selection clauses in the franchise relationship—a business relationship—are not fully enforceable.

Enforcement of arbitration agreements in the franchise relationship will also produce systemic benefits, economizing on the scarce judicial resources available for resolving other disputes where parties may not be able to structure a dispute resolution procedure in advance. Those scarce judicial resources are utilized not only when a dispute subject to arbitration is instead resolved in a judicial forum, but also when parties, encouraged by anti-arbitration decisions like that of the Montana Supreme Court in this case, participate in satellite litigation such as this to challenge the enforceability of agreements to arbitrate. The benefits that Congress sought to realize by mandating the rigorous enforcement of agreements to arbitrate will be realized only if state courts and state legislatures are reminded that attempts to undermine the enforceability of agreements to arbitrate will not go unnoticed by this Court. Otherwise, state legislatures will be unleashed to formulate all manner of requirements for, and obstacles to, arbitration agreements, and the sound public policy that underlies the FAA will be subverted. Moreover, there is no assurance that states will not seek to burden arbitration agreements retroactively, contending that the right to arbitrate is a purely procedural right, the deprivation of which would not impair obligations or substantive rights under franchise agreements. For those reasons, it is critical to the franchising community that this Court review the decision of the Montana Supreme Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

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